there is such a covenant. The rule is well settled, both in this country and in England, that, in the absence of fraud and concealment, a lease of unfurnished premises raises no implied covenant by the landlord that they are tenantable and fit for immediate occupation. *Hart* v. *Windsor,* 12 M. & W. 68. A lease of furnished premises raises such an implied covenant according to the English cases. *Smith* v. *Marrable,* 11 M. & W. 5; *Wilson* v. *Finch-Hatton,* 46 L. J. Ex. 489, 2 Ex. D. 336, while in this country there is a split of authorities. *Ingalls* v. *Hobbs,* 156 Mass. 348, 31 N. E. 286; *Davis* v. *George,* 67 N. H. 393, 39 Atl. 979. The reason for the distinction is, that in the case of the furnished premises it is generally understood that the tenant intends immediate occupation of premises, ready for use, whereas in the other case the tenant does not intend occupation until he has examined the premises and made them tenantable according to his own desires. UNDERHILL, L. AND T., § 478. It would seem that the infection of the premises, at the commencement of the tenancy, by a disease dangerous to an occupant would constitute a breach of the implied covenant that they are tenantable. In many instances, it would be just as difficult for the landlord to discover that the tenant has the infectious disease, as for the tenant to discover the infection of the premises. There would seem, then, to be some reason for implying such a covenant on the part of the lessee. Where the element of knowledge, false representation and concealment enters, the situation is clearer. The landlord is held liable if he has knowledge of the infection of the premises and fails to reveal the fact. UNDERHILL, L. AND T., § 482. If the converse is the situation, that is, if the tenant has knowledge of his infectious disease and is guilty of fraudulent concealment or false representation, he too should be held liable. While no court of last resort has expressly so held, *Gwynne* v. *Clarke,* decided recently in the Monaghan County Court (Ireland), referred to in 58 Ohio Law Bulletin, 246, adopts this view, as does also, by inference, the court in the case of *Farrar* v. *Peterson & Co.,* 72 Wash. 482, 130 Pac. 753.

MASTER AND SERVANT—WRONGFUL DISCHARGE—DOCTRINE OF "CONSTRUCTIVE SERVICE."—Defendant employed plaintiff for a term of one year at an agreed salary. Shortly after plaintiff had entered upon the performance of the services under the contract, defendant wrongfully discharged him. Plaintiff recovered judgment for the first instalments, and now, after the expiration of the contract period, sues for the remaining instalments. Defendant pleads the judgment in the first suit as a bar to plaintiff's action. *Held,* the judgment on the previous instalments was no bar to the action, the doctrine of "constructive service" still prevailing in Georgia. *Edison* v. *Dundee Woolen Mills,* (Ga. App. 1917), 93 S. E. 324.

Whatever view the court may have held concerning the wisdom of allowing a plaintiff thus wrongfully discharged to bring separate actions for the successive instalments as they should become due, no other disposition was possible for this case, since it was controlled by the prior decisions of the Georgia Supreme Court. *Moore* v. *Kelly & Jones Co.,* 111 Ga. 371, 36 S. E. 802; *Blun* v. *Holitzer,* 53 Ga. 82; *Isaacs* v. *Davies,* 68 Ga. 169. A few other

jurisdictions are still in accord with these decisions. *Fowler* v. *Armour,* 24 Ala. 194; *Strauss* v. *Meertief,* 64 Ala. 299, 38 Am. St. Rep. 8; *Marx* v. *Miller,* 134 Ala. 347, 32 So. 765; *Smith* v. *Lumber Co.,* 142 N. C. 26; *Stradley* v. *Bath Portland Cement Co.,* 228 Pa. St. 108; *Allen* v. *International Textbook Co.,* 201 Pa. St. 579, 51 Atl. 323. The doctrine of "constructive service" had its origin in a *nisi prius* decision in England early in the nineteenth century. *Gandell* v. *Pontigny,* 4 Campb. 375. The effect of the doctrine is to allow a servant, employed for a definite period at a stipulated wage, and wrongfully discharged before the expiration of the term, to bring suit for each instalment as it becomes due, as though the contract were still continuing. This holding is based on the fiction that the servant is constructively ready to perform the services, and that when the time comes for the payment of each instalment there is a partial breach of the contract. The doctrine has been repudiated in England, *Fewings* v. *Tisdal,* 1 Exch. 295; *Archard* v. *Hornor,* 3 C. & P. 349, 14 E. C. L. 604; *Elderton* v. *Emmens,* 6 C. B. 160, 60 E. C. L. 160, affirmed 13 C. B. 495, 76 E. C. L. 495, 4 H. L. Cas. 624; and in a majority of the American jurisdictions. *James* v. *Allen Co.,* 44 Oh. St. 226, 6 N. E. 246, 58 Am. Rep. 821; *Howard* v. *Daly,* 61 N. Y. 362, 19 Am. Rep. 285 (though the case did not turn alone on this point); *Olmstead* v. *Bach,* 78 Md. 132, 27 Atl. 501, 22 L. R. A. 74, 44 Am. St. R. 273; *Carmean* v. *North American Transportation, etc. Co.,* 45 Wash. 446, 88 Pac. 834, 122 Am. St. Rep. 930, 13 Ann. Cas. 110 and note, 8 L. R. A. (N. S.) 595. According to the prevailing view, the servant thus wrongfully discharged cannot, even by waiting until the expiration of the contract term, bring his action for wages as such. Instead, his suit is for damages as for the breach of an ordinary contract, and a judgment in one suit, although covering only a part of the contract period, will be a bar to further actions. This holding goes on the theory that there is only one breach, and that a single cause of action should not be split into several suits. In this one suit, however, whether brought before or after the expiration of the contract period, the plaintiff may, by the later authorities, recover full damages for the loss caused by the breach of the contract. *Addis* v. *Gramophone Co.* (1909), A. C. 488, 78 L. J. K. B. 1122, 101 L. T. N. S. 466, 3 British Rul. Cas. 98, 16 Ann. Cas. 98, note; *Meade* v. *Doherty,* 7 N. B. 195; *Stearns* v. *L. S. & M. S. R. Co.,* 112 Mich. 651, 71 N. W. 148; *Cutter* v. *Gillette,* 163 Mass. 95, 39 N. E. 1010; *Boland* v. *Glendale Quarry Co.,* 127 Mo. 520, 30 S. W. 151; *Rhoades* v. *Chesapeake & O. R. Co.,* 49 W. Va. 494, 55 L. R. A. 170, 87 Am. St. Rep. 826, 39 S. E. 209; *Wilke* v. *Harrison Bros.,* 166 Pa. St. 202, 30 Atl. 1125; *Hamilton* v. *Love,* 152 Ind. 641, 53 N. E. 181, 54 N. E. 437, 71 Am. St. Rep. 384. This recovery includes prospective damages for the entire period of the contract, rather than merely up to the time of the trial, but does not include damages for injured feelings or reputation or for the manner of the dismissal. *Addis* v. *Gramophone Co., supra.* But where the stipulated term is for life or during ability to perform the services the authorities are in confusion as to whether prospective damages are recoverable. Apparently, if the wronged servant in such a case is to secure redress of any effectiveness at all, he must be given speculative damages. And who can say how long he will live? It is this injustice in

the majority holding which the Minnesota court attacks in *McMullan* v. *Dickinson Co.*, 60 Minn. 156, 62 N. W. 120, 51 Am. St. Rep. 511, 27 L. R. A. 409. The latter court, after showing that the fiction of "constructive service" is properly repudiated as a basis of recovery (because of its inconsistency with the principle that the plaintiff should attempt to mitigate the damages by searching for another position), argues that the discharged servant simply desires indemnity, and not damages; that it is impossible to estimate fairly or accurately the time he would have been able to serve; that there is no way to fix the amount necessary to indemnify him, until the time has actually passed, so that the amount earned by other employment, if any, can be deducted; that in the meantime he may have no income upon which to live; that the Statute of Limitations probably would force him to bring his action before the expiration of the term that he would have been able to serve; and that he should be allowed to bring successive actions at the close of the instalment periods. That is, the Minnesota view is to adopt the rule of "constructive service" as to the measure of damages while rejecting it as the basis of recovery. Unfortunately, the equitable Minnesota rule has not been followed elsewhere. See *Carmean* v. *North American Transportation, etc. Co., supra.*

PHYSICIANS AND SURGEONS—PRACTICING WITHOUT LICENSE—SPIRITUALISM. —THE PUBLIC HEALTH LAW prohibited the practice of medicine without a license, excepting by those who practice according to the religious tenets of any church. A member of the Spiritualist Church had an office in which he received patients and dispensed drugs and liniments prepared by himself. It appeared that he was ordained as a healer of the church. *Held,* that defendant was not immune, the exemption giving him no authority to heal by agencies other than prayer or the practice of religion. *People* v. *Vogelgesang* (N. Y. 1917), 116 N. E. 977.

The cases for the most part regard the diagnosis as the test to determine whether a practice or treatment is included in the term medicine. *State* v. *Smith,* 233 Mo. 242. The exception to the statute in the case of one practicing the religious tenets of any church cannot be used as a shield to a business undertaking, and when the accused claims to act as a "divine healer" it has been held that it is the nature of defendants business, not the objects of the tenets of his church that control. *Smith* v. *People,* 51 Colo. 270, 117 Pac. 612. In *State* v. *Peters,* 87 Kans. 265, 123 Pac. 751, where defendant claimed to practice a religious belief but "diagnosed diseases and treated patients in a matter-of-fact way by manipulations and rubbing," he was not within the exemption of the statute. In the instant case the same applies. "The sufferer's mind must be brought into submission to the infinite mind, and in this must be the healing," and, continues the opinion, "While the healer inculcates the faith of the church as a method of healing he is immune. When he goes beyond that, puts his spiritual agencies aside, and takes up the agencies of the flesh, his immunity ceases." The statute is strictly construed against the defendant. *Commonwealth* v. *Delon,* 219 Mass. 217, 106 N. E. 846. But the exemption includes every person in the practice of the religious tenets